

**Remarks:**

Applicants have read and considered the Office Action dated January 3, 2011 and the references cited therein. Claims 1 and 10 have been amended. New claims 13-14 have been added. Claims 5 and 12 have been cancelled without prejudice or disclaimer. Claims 1-4, 6-11 and 13-14 are currently pending. Reconsideration is hereby requested.

In the Office Action, claim 9 was objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form, including all of the limitations of the base claim and any intervening claims. Applicants thank the Examiner for the indication of allowable subject matter. However, Applicants assert that claim 1 is now in condition for allowance and Applicants have chosen not to rewrite claim 9 in independent form at this time.

Claims 1-5 and 10-12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tseng in view of Pollet et al. Applicants respectfully traverse the rejection. Applicants note that claim 1 recites an inhalation therapy device including a nebulising chamber, an aerosol generator arranged to release an aerosol into the nebulising chamber and comprises a nozzle element and at least one channel extending between the nozzle element and a member. Claim 1 further recites that the nozzle element comprises at least a first part and a second part, the first part of the nozzle element comprising a more resilient material than the second part of the nozzle element and including a nozzle outlet. The first part of the nozzle element is attached to the second part of the nozzle element and tapers further than the second part with the cross section of the first part decreasing to a deformable nozzle tip. Finally, claim 1 recites that the member is removable to expose portions of the at least one channel formed by the nozzle element. Applicants assert that the inhalation therapy device recited in claim 1 is neither shown nor suggested by Tseng, Pollet or any other prior art or combination thereof. Claim 1 provides further clarification regarding the structure of the nozzle tip. Applicants assert that none of the prior art teaches or discloses the nozzle element having a first part with a more

resilient material than the second part of the nozzle element and including a nozzle outlet. Applicants note that the combination of the resilience along with the first part tapering further than the second part and with the first part decreasing to a deformable nozzle tip is neither shown nor suggested by the prior art references or any combination thereof. Applicants assert that the recited therapy device with the particular nozzle element provides for improved aerosol generation and distribution as well as easier cleaning and maintenance than is possible with the prior art references. Applicants assert that claim 1 and the claims depending therefrom patentably distinguish over Tseng, Pollet or any other prior art and requests that the rejection be withdrawn.

Similarly, claim 10 recites an inhalation therapy device having a nebulising chamber and an aerosol generator comprising a nozzle element arranged such that the nozzle element releases an aerosol into the nebulising chamber. The nozzle element includes at least a first part comprising a nozzle element made of a more resilient material than a member of the inhalation therapy device to which the nozzle element is attached. Claim 10 further specifies that the first part of the nozzle element forms a deformable resilient nozzle tip tapering from the member to which the nozzle element is attached. As discussed above with regard to Tseng and Pollet, it can be seen that the prior art fails to teach or suggest an inhalation therapy device having the particular nozzle element with the combination of a nozzle element made of a more resilient material than the member to which the nozzle element is attached and with the feature of the first part of the nozzle element forming a deformable resilient nozzle tip tapering from the member to which the nozzle element is attached. As discussed above, this provides an advantageous inhalation therapy device that provides for improved manufacturing and assembly as well as reliable aerosol generation and easy, quick cleaning and reassembly. Applicants assert that Tseng and Pollet fail to teach or suggest the nozzle element with the combination of different resiliencies and tapers. Applicants assert that claim 10 patentably

distinguishes over the combination of Tseng and Pollet et al. and requests that the rejection under 35 U.S.C. § 103(a) be withdrawn.

For similar reasons, Applicants assert that the claims depending from claims 1 and 10 also patentably distinguish over the references and request that the rejection be withdrawn.

Claims 6-8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tseng and Pollet et al. and further in view of Dobbeling et al. Applicants respectfully traverse the rejection. Applicants note that the Dobbeling reference does not teach any specific elasticity of components 31 and 32. Applicants further note that the Dobbeling reference relates to a nozzle for a combustion system. Such a structure is fundamentally different than an atomizer for use by a patient with completely different objectives and requirements. Applicants assert that the needs for such a system are fundamentally different than those for an aerosol nebuliser for an inhalation therapy device. Moreover, Dobbeling fails to overcome the deficiencies of the Tseng and Pollet references with regard to claims 1 and 10 as discussed above. As Dobbeling is related to a field completely unrelated field to inhalation therapy devices and, even if combined, fails to remedy the shortcomings of Tseng and Pollet, Applicants assert that the combination of Tseng, Pollet and Dobbeling renders claims 1 and 10 unpatentable. Applicants therefore request that the rejection under 35 U.S.C. § 103(a) be withdrawn.

New claims 13 and 14 recite that the first part of the nozzle element consists of a material resuming original geometry upon deformation. Applicants assert that this is neither shown nor suggested by the prior art and provides for use of materials that may be deformed by the user and then reused again and again while also achieving the proper contact and sealing against the user's mouth. Applicants assert that claims 13 and 14 are allowable for these reasons as well as their dependence upon claims 1 and 10 respectively.

U.S. Patent Application Serial No. 10/575,933  
Reply to Office Action dated January 3, 2011

A speedy and favorable action in the form of a Notice of Allowance is hereby solicited.  
If the Examiner feels that a telephone interview may be helpful in this matter, please contact  
Applicants' representative at (612) 336-4728.

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number  
of months to enter these papers or any future reply, if appropriate. Please charge any additional  
fees or credit overpayment to Deposit Account No. 13-2725.



Dated: 6/3/11

Respectfully submitted,  
MERCHANT & GOULD P.C.

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